

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220620 **DATE:** February 10, 1986
MATTER OF: Trojan Industries Inc.

DIGEST:

1. Where an invitation for bids requires a standard current product, but allows modifications to that product, a bid offering a modified current model is responsive. Allegation that the needed modifications to low bidder's product are so substantial that the product will no longer be a standard current product has no merit. The IFB placed no limitations on modifications that could be made. Under the circumstances, there is no basis for our finding the modifications to the offered model unacceptable.
2. Where an IFB's "Guaranteed Maximum Shipping Weights and Dimensions" clause requires shipping information for the determination of transportation costs of items to be shipped and a bidder underestimates guaranteed weights or dimensions, our Office has recognized that a bidder may guarantee a weight or dimension which is less than actual rather than reduce the price for the item itself.
3. Where a bidder fails to state the f.o.b. origin or shipping point for the items to be provided but that information can be ascertained from a reading of the bid as a whole, and the IFB also provides that if the bidder fails to provide the shipping point the government would assume delivery from the plant at which the contract would be performed, the failure to provide the f.o.b. origin information does not render the bid unacceptable.
4. Where the agency requests bid extensions 1 day prior to bid expiration and a bidder responds to the agency's request for bid extension on the next working day, which is 2 days after the expiration of its bid, the revival of the expired bid is proper because

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the bidder responded reasonably promptly and gained no unfair competitive advantage over other bidders. Although the extension contained the wrong solicitation number, it showed the bidder's intention to extend the bid.

Trojan Industries Inc. (Trojan) protests the award of a contract to Fiatallis North America, Inc. (Fiatallis), under invitation for bids (IFB) No. DLA700-85-B-4617 issued by the Defense Logistics Agency (DLA), Defense Construction Supply Center, Columbus, Ohio. The IFB was for different types of pneumatic-tired, four-wheel-drive, scoop-type front-end loaders on a fixed-price, f.o.b. origin basis. Trojan basically contends that the offered Fiatallis loader, model FR7, does not comply with the IFB's requirement that the offered loader must be "essentially the current product" of the manufacturer, and that the transportation costs of the FR7 were based on incorrect measurements of the machine's dimensions.

The protest is denied.

Four bids were received in response to the IFB. Bids were evaluated for lowest overall costs including transportation costs which were based on the guaranteed shipping data provided by bidders. In accordance with the IFB, award was to be made on an "all or none" basis for line items 0001-0016 and 0034-0037, among others. Although Trojan offered lower prices for line items 0001-0022 (with line item 0019 deleted) and line items 0034-0038, the final evaluated price for Fiatallis was approximately \$1,009,000, while Trojan was evaluated at about \$1,016,000 due to the transportation evaluation. Fiatallis was awarded the contract for these items. Performance has been withheld pending our decision on the protest.

The IFB required bidders to provide the make and model number of the offered product and certify that it complied with the requirement that the loaders be essentially the standard current product of the manufacturer. The IFB also permitted "such modifications and optional attachments as may be specified." In its bid, Fiatallis offered a "modified" FR7 and certified that the model is its standard commercial item which would fully comply with the IFB's specifications.

Trojan alleges that Fiatallis' bid should have been rejected as being nonresponsive because the FR7 does not meet the IFB's bucket size and horsepower requirements and must be modified in order to satisfy these requirements. As a result, Trojan contends, Fiatallis' FR7 is not a standard current product as required by the IFB.

In order to be deemed responsive, a bid must unequivocally offer to meet the IFB's material requirements at a firm, fixed price. A bidder that limits its contractual obligation or does not offer performance at a firm, fixed price must be rejected as nonresponsive. Turbine Engine Services--Request for Reconsideration, B-218447.2, June 25, 1985, 85-1 CPD ¶ 721. Although the IFB in this case did require bidders to provide their standard current product, it also allowed modifications of that product in order to meet the specification's requirements. Thus, Fiatallis' offer of a modified current model was responsive. See Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533.

Trojan suggests that the needed modifications are so substantial that the loader no longer will be the offered current model. However, the IFB placed no limitations on modifications that could be made to a standard commercial product and did not require data describing any proposed modifications. Under the circumstances, there is no basis for our finding the modifications to Fiatallis' model unacceptable. See Schreck Industries, Inc. et al., B-204050 et al., July 6, 1982, 82-2 CPD ¶ 14.

Trojan also contends that the transportation costs for Fiatallis' loaders were based on incorrect physical dimensions. The "Guaranteed Maximum Shipping Weights and Dimensions" clause of the IFB provided that in evaluating bids, the f.o.b. origin price and all transportation costs to the specified destination would be considered. The clause advised bidders that the guaranteed maximum shipping weights and dimensions were required for the determination of transportation costs and that if the delivered supplies exceed the guaranteed weights and dimensions, the contract price would be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes and the transportation costs that should have been used for evaluation purposes based on correct shipping data.

Our Office has recognized that the purpose of this type of clause is to enable the procuring agency to accurately ascertain its total cost for a proposed contract and to establish the basis for a contract price reduction in the event the maximum guaranteed shipping weights or dimensions are exceeded. Further, we have recognized that in order to meet competition, a bidder may guarantee a weight which is less than actual rather than reduce the price for the item itself. Gentex Corp., B-216724, Feb. 25, 1985, 85-1 CPD ¶ 231.

Since a bidder may understate the guaranteed dimensions as a means of effecting a price reduction, Trojan's protest that Fiatallis' bid included incorrect measurements fails to provide a valid basis for protest.

Trojan also argues that the award to Fiatallis was improper because its bid failed to complete IFB section F01, which required the bidder to state the f.o.b. origin or shipping point, and because Fiatallis failed to timely extend its bid when asked to do so by the contracting officer.

We have held that the failure to specifically designate the f.o.b. origin point is a minor irregularity that does not affect the validity of the bid, if the point can be ascertained from a reading of the bid as a whole.

InterTrade Industries Ltd., B-219353, Sept. 27, 1985, 64 Comp. Gen. 85-2 CPD ¶ 346; 49 Comp. Gen. 517 (1970). In this case, Fiatallis' bid included information on the f.o.b. origin point in paragraph K31(c), where it is indicated that the loaders would be shipped from Portsmouth, Virginia. Moreover, under IFB paragraph M10, which incorporates FAR, 48 C.F.R. § 52.247-46 (1984), if Fiatallis had failed to indicate any shipping point, the government would have evaluated its offer on the basis of delivery from the specified plant at which the contract would be performed, which was Portsmouth, Virginia, in this case. Therefore, Fiatallis' failure to provide f.o.b. origin information in paragraph F01 did not render its bid unacceptable.

Regarding the expiration of Fiatallis' bid, DLA initially argues that this issue, raised in Trojan's comments on the agency protest report, is untimely because Trojan was required to have asserted all bases of protest against the award within 10 days of the award. We do not agree. The fact that Fiatallis' bid had expired was not evident from any documentation, including the contract, that Trojan did or could have reasonably obtained following the award. We will consider a new protest issue where, as here, it is based upon information in the agency report and it meets the timeliness requirement in our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2); Westinghouse Electric Corp., B-215554, Sept. 26, 1985, 85-2 CPD ¶ 341.

The agency states that it requested bid extensions on Friday, September 27, 1985, 1 day before the original bid acceptance period (of 60 calendar days) expired on Saturday, September 28. By telex dated Monday, September 30, Fiatallis extended its bid until October 11, but the telex

incorrectly cited a different solicitation. Fiatallis sent a telex with the correct solicitation citation on October 2. Award was made on September 30, apparently upon receipt of the first telex.

Trojan contends that it extended its bid before the expiration of the bid acceptance period, and that Fiatallis' failure to do so should have rendered its bid unacceptable.

Even though bids expired on a Saturday and Fiatallis sent an extension on the next working day, there is no question that the extension was sent 2 days after the bids had expired. The IFB incorporated a clause that expressly stated: "Time, if stated as a number of days, will include Saturdays, Sundays, and holidays." FAR, 48 C.F.R. § 52.214-12(f). Thus, the last day for acceptance of the bid was Saturday, September 28. See 52 Comp. Gen. 768 (1973).

Our Office has recognized that a bidder may extend its acceptance period and revive its expired bid if doing so would not compromise the integrity of the competitive bidding system. W.A. Strom Contracting, Inc. et al., B-216115 et al., Dec. 26, 1984, 84-2 CPD ¶ 705. Circumstances that compromise the system's integrity are where the bidder offered an acceptance period shorter than other bidders (if the IFB afforded bidders the option to offer less than a standard timeframe that otherwise would be presumed to apply), or where the bidder expressly or impliedly refused a request to extend its bid and later granted an extension as its own interests dictated. That is because controlling the government's legal ability to accept the bid in a manner at variance with the terms offered by other bidders limits the bidder's exposure to marketplace uncertainties and reduces that bidder's risk. Arsco International, B-202607, July 17, 1981, 81-2 CPD ¶ 46. When an agency requests an extension, it is the responsibility of a bidder that desires to extend its bid to communicate assent, either by insuring that an express extension in fact is received by the agency, or through conduct from which the agency reasonably can infer the bidder's intention to extend the bid. See Dunrite Tool & Die, Inc., B-211735, June 6, 1983, 83-1 CPD ¶ 610.

We do not find that the revival of Fiatallis' expired bid was improper under these standards. While Trojan and possibly other bidders were able to extend their bids by Saturday, September 28, the time for the requested extension was less than 1 business day prior to the Saturday bid expiration date and Fiatallis responded with reasonable

promptness. On the next business day, Fiatallis extended its bid. Although the solicitation number was incorrect, the agency apparently concluded that the extension indicated Fiatallis' intention to extend and awarded the contract based on that conclusion. Because Fiatallis quickly extended its bid, which offered the same initial bid acceptance period as the other bidders, we find no prejudice to the other bidders.

The protest is denied.

for Seymour E. Van
Harry R. Van Cleve
General Counsel